

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

CYWEE GROUP LTD.,

Plaintiff

V.

SAMSUNG ELECTRONICS CO., LTD.
AND SAMSUNG ELECTRONICS
AMERICA, INC.,

Defendants.

NO. 2:17-CV-00140-WCB-RSP

**DEFENDANTS SAMSUNG ELECTRONICS CO., LTD. AND SAMSUNG
ELECTRONICS AMERICA, INC.'S MOTION TO DISMISS**

Defendants Samsung Electronics Co., Ltd. and Samsung Electronics America, Inc. respectfully request that Plaintiff CyWee Group Ltd.'s claims be dismissed with prejudice. CyWee asserted U.S. Patent Nos. 8,552,978 ("the '978 patent") and 8,441,438 ("the '438 patent") against Samsung. The Patent Trial and Appeal Board has held all asserted claims of both patents unpatentable in final written decisions. The Federal Circuit affirmed those decisions. *See CyWee Grp. Ltd. v. Google LLC*, 59 F.4th 1263 (Fed. Cir. 2023) (affirming decisions invalidating asserted claims of the '438 and '978 patents); *CyWee Grp. Ltd. v. ZTE (USA), Inc.*, 90 F.4th 1358 (Fed. Cir. 2024) (affirming decision invalidating asserted claims of '438 patent). The final deadline to petition for a writ of certiorari passed on June 24, 2024.

"Suits based on cancelled claims must be dismissed for lack of jurisdiction." *SHFL Ent., Inc. v. DigiDeal Corp.*, 729 F. App'x 931, 934 (Fed. Cir. 2018). As noted by this Court in its order granting Samsung's motion to stay pending IPR review, "[i]f the PTAB holds that the claims at issue in the IPR are invalid, the result will be that those claims will be canceled, and they will not be available to CyWee to press in this or any other ongoing litigation." *CyWee Grp. Ltd. v. Samsung Elecs. Co.*, No. 2:17-CV-00140-WCB-RSP, 2019 WL 11023976, at *8 (E.D. Tex. Feb. 14, 2019) (citing *Fresenius USA, Inc. v. Baxter Int'l, Inc.*, 721 F.3d 1330, 1340 (Fed. Cir. 2013)). In *Fresenius*, the Federal Circuit stated, "when a claim is cancelled, the patentee loses any cause of action based on that claim, and any pending litigation in which the claims are asserted becomes moot." 721 F.3d at 1340.

CyWee has already agreed to this relief in two other cases. *See CyWee Grp. Ltd. v. LG Elecs., Inc.*, No. 3:17-cv-01102-BEN-MMP, Dkt. 108 (S.D. Cal. July 17, 2024); *CyWee Grp. Ltd. v. Google, Inc.*, No. 1:18-cv-00571-RGA, Dkt. 51 (D. Del. July 5, 2024). In those cases, CyWee asserted the same patents as here and agreed to dismiss its claims with prejudice and

defendants' counterclaims without prejudice, noting that all asserted claims "have been held unpatentable." *Id.* But CyWee refuses to agree to this relief here because CyWee now seeks to expand this case to assert infringement of other, unnamed patents. But without a single valid asserted claim, there no longer is jurisdiction over this matter, and it must be dismissed. *SHFL*, 729 F. App'x at 934.

Accordingly, Defendants respectfully request that Plaintiff's claims for relief against Defendants be dismissed with prejudice and that Defendants' counterclaims be dismissed without prejudice.

DATED: July 31, 2024

Respectfully submitted,

By: /s/ Elizabeth L. Brann

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Attorneys for Defendants

SAMSUNG ELECTRONICS CO., LTD AND

SAMSUNG ELECTRONICS AMERICA,

INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed electronically in compliance with Local Rule CV-5 on July 31, 2024. As of this date, all counsel of record had consented to electronic service and are being served with a copy of this document through the Court's CM/ECF system under Local Rule CV-5(a)(3)(A).

/s/ Elizabeth L. Brann

Elizabeth L. Brann